

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND DEREK SHIPMAN**
(Funeral Director)

The State Board of Embalmers and Funeral Directors (the “Board”) and Derek Shipman (“Licensee” or “Derek Shipman”), enter into this “Settlement Agreement Between State Board of Embalmers and Funeral Directors and Derek Shipman ” (the “Settlement Agreement”) to resolve the question of whether there is cause to discipline the funeral director license issued to him by the Board and, if so, to agree on the appropriate level of discipline to impose on the license as a result of this violation.

Pursuant to the terms of Sections 536.060 and 621.045, RSMo¹, the parties hereto waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri and the right to a disciplinary hearing before the Board and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that he understands the various rights and privileges afforded to him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided to him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Agreement and agrees to abide by the terms of this document, as they pertain to him. Licensee has been advised of his right to consult with his private legal counsel, at his expense, regarding this Settlement Agreement.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621 RSMo.

Joint Stipulation of Facts and Conclusions of Law

Parties and Jurisdiction

1. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

2. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to Chapter 621, RSMo, and § 333.330, RSMo.

3. Derek Shipman is an individual who has registered his address with the Board as P.O. Box 117, Bismarck, Missouri 63624.

4. Derek Shipman holds funeral director license number 006414 that was current and active at all times relevant to this Agreement, except when it expired between on or about June 1, 2014 and on or about July 11, 2014.

5. Sondra Shipman d/b/a Shipman Funeral Home is a sole proprietorship that has a registered address with the Board of 449 S. Cedar St., P.O. Box 155, Bismarck, Missouri.

6. Sondra Shipman d/b/a Shipman Funeral Home (“Shipman Funeral Home”) holds funeral establishment license number 001913. This license was current and active at all times relevant to this Agreement.

7. Shipman Funeral Home was a fictitious name registered with the Missouri Secretary of State by Sondra Shipman until that registration expired on or about May 29, 2012. Sondra Shipman again registered the fictitious name of Shipman Funeral Home with the Missouri Secretary of State on or about February 1, 2013.

8. Sondra Shipman d/b/a Shipman Funeral Home holds preneed seller license number 2009039207. This license is current and active and has been so at all times relevant to this Agreement, except for when it was suspended for non-renewal as set forth in this Agreement.

9. Sondra Shipman d/b/a Shipman Funeral Home holds preneed provider license number 2009039206. This license was current and active and has been so at all times relevant to this Agreement, except for when it was lapsed for non-renewal as set forth in this Agreement.

10. Derek Shipman serves as Manager in Charge of Shipman Funeral Home’s seller business and as Funeral Director in Charge of Shipman Funeral Home’s funeral establishment.

11. As Funeral Director in Charge and Manager in Charge of Shipman Funeral Home, Derek Shipman is responsible for all acts of Shipman Funeral Home related to its establishment and seller activities.

12. Derek Shipman acts on behalf of Shipman Funeral Home.

13. The Board conducted a financial examination of Shipman Funeral Home as authorized and mandated by Section 436.470, RSMo.

14. On or about September 9, 2011, the Board made an on-site visit to examine Shipman Funeral Home's seller's books and records.

15. On or about September 9, 2011, Derek Shipman signed the Financial Examination Attestation in which he attested that he had "provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller."

16. Upon completion of the financial examination, the Board's examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or about October 6, 2011 (the "Financial Examination Report").

17. By letter dated October 27, 2011, the Board provided a copy of the Financial Examination Report to Shipman Funeral Home.

18. In the October 27, 2011 letter, the Board noted the deficiencies identified in the Financial Examination Report and requested that Shipman Funeral Home send a written response to the Board within 30 days, including verification that the deficiencies were corrected or a plan to correct the deficiencies.

19. Shipman Funeral Home did not respond within 30 days of the October 27, 2011 letter.

20. By letter dated December 16, 2011, which was sent via certified mail and by first class mail, the Board notified Shipman Funeral Home that the Board had received no response to the October 27, 2011 letter and requested a response no later than January 15, 2012.

21. The December 16, 2011 letter also notified Shipman Funeral Home that if no response was received, the Board requested Shipman Funeral Home to appear before the Board in person on January 25, 2012 at 1:45 p.m. in Jefferson City, Missouri.

22. Sondra Shipman signed the “green card” confirming receipt of the December 16, 2011 letter sent via certified mail.

23. Shipman Funeral Home provided no written response to the Board by January 15, 2012.

24. Shipman Funeral Home did not appear before the Board at the meeting on January 25, 2012.

25. By letter dated February 15, 2012, Derek Shipman provided to the Board a written response to the Financial Examination Report.

26. The February 15, 2012 letter addressed some, but not all, of the deficiencies noted in the Financial Examination Report.

27. By letter dated February 16, 2012, First Bank, Bismarck, Missouri, confirmed that all joint accounts funding preneed contracts for Shipman Funeral Home were under joint control of Shipman Funeral Home and the consumer.

28. By letter dated March 8, 2012, the Board again requested that Shipman Funeral Home appear before the Board and requested that Shipman Funeral Home appear on March 21, 2012 at 3:45 p.m. in Jefferson City, Missouri to discuss the Financial Examination Report.

29. The March 21, 2012 meeting was rescheduled by the Board, and Shipman Funeral Home’s appearance was rescheduled to April 25, 2012 at 10:30 a.m.

30. By letter dated April 11, 2012, the Board notified Shipman Funeral Home of the time, date and location of the requested appearance before the Board on April 25, 2012.

31. On or about April 24, 2012 at or about 2:15 p.m., Shipman Funeral Home called the Board office to inform the Board that no one would be available to appear at the board meeting due to receipt of a death call.

32. On or about April 24, 2012, Shipman Funeral Home faxed to the Board a copy of a blank preneed contract and preneed information sheet.

33. On April 25, 2012, no one appeared before the Board on behalf of Shipman Funeral Home.

34. Shipman Funeral Home failed to submit to the Board its completed renewal for its seller license on or before its renewal date of October 31, 2012.

35. Shipman Funeral Home failed to submit to the Board its completed renewal for its provider license on or before its renewal date of October 31, 2012.

36. On or about April 17, 2013, the Board received a seller reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

37. On or about April 17, 2013, the Board received a provider reinstatement request from Shipman Funeral Home, but the reinstatement was not completed.

38. On or about April 17, 2013, the Board faxed to Shipman Funeral Home a memo indicating the items the Board needed to complete the seller and provider reinstatements.

39. By letter dated May 7, 2013, the Board notified Shipman Funeral Home that its seller license had been suspended due to failure to file a completed annual renewal due on or before October 31, 2012 and again informed Shipman Funeral Home what additional steps were required for reinstatement.

40. By a second letter dated May 7, 2013, the Board notified Shipman Funeral Home that its provider license had expired on October 31, 2012 and had not been renewed and again informed Shipman Funeral Home what additional steps were required for reinstatement.

41. In the May 7, 2013 letters to Shipman Funeral Home, the Board asked it to report any activities it had performed as either a provider or a seller during the time its licenses were not renewed.

42. Shipman Funeral Home did not respond to the May 7, 2013 letters.

43. By letter dated May 29, 2013, Shipman Funeral Home was asked again to provide the records requested in the May 7, 2013 letters, and the Board requested that Shipman Funeral Home appear before the Board at its June 25, 2013 Board meeting.

44. The reinstatement requests were finalized by Shipman Funeral Home on or about June 17, 2013.

45. The Board reinstated Shipman Funeral Home's seller license number 2009039207 on or about June 20, 2013.

46. The Board reinstated Shipman Funeral Home's provider license number 2009039206 on or about June 20, 2013.

47. On June 25, 2013, Derek Shipman and Sondra Shipman appeared before the Board to discuss the lapsed seller and provider licenses. At this meeting, Mr. Shipman and Ms. Shipman discussed with the Board why the licenses had not been renewed timely and gave the Board assurances that future licenses would be renewed timely.

48. On or about October 31, 2013, Shipman Funeral Home signed its seller and provider renewal forms and its seller annual report.

49. On or about November 5, 2013, the Board notified Shipman Funeral Home that if the license renewal has not been processed by October 31, then Shipman Funeral Home could not act as a seller or a provider until the licenses were renewed. This notification was sent by facsimile transmission marked "URGENT!!!"

50. By letters dated November 5, 2013, the Board notified Shipman Funeral Home that its seller and provider licenses could not be renewed because of the noted deficiencies in the renewal information Shipman Funeral Home submitted.

51. By letter dated November 12, 2013, sent both by regular mail and by certified mail, the Board notified Shipman Funeral Home that its seller license had lapsed due to non-renewal and had been suspended, pursuant to Section 436.460.7, RSMo, for failure to file a complete annual report. This letter was received by Shipman Funeral Home on or about November 19, 2013.

52. By letter dated November 12, 2013, sent by both regular mail and by certified mail, the Board notified Shipman Funeral Home that its provider license lapsed due to failure to complete the steps necessary to renew the provider license. Shipman Funeral Home received this letter on or about November 19, 2013.

53. On or about November 22, 2013, the Board mailed Shipman Funeral Home notice of outstanding issues with the renewal forms.

54. On or about November 21, 2013, Shipman Funeral Home responded via facsimile to the Board's notices and attempts to resolve the outstanding renewal issues.

55. By letter dated December 4, 2013, the Board invited Shipman Funeral Home to appear before it on December 16, 2013 at 3:15 p.m. to discuss the failure of Shipman Funeral Home to renew its seller license. Shipman Funeral Home received this letter on or about December 10, 2013.

56. By e-mail dated December 12, 2013, Shipman Funeral Home declined the invitation to appear before the Board and offered an explanation of its attempts to timely complete the renewals.

57. By Memorandum dated February 4, 2014, the Board noted the remaining deficiencies that needed to be remedied in order for the seller and provider licenses to be reinstated and also requested copies of each preneed contract that had been sold or serviced since November 1, 2013.

58. Shipman Funeral Home responded with attempts at correcting the deficiencies.

59. By facsimile transmission on or about February 13, 2014, the Board again notified Shipman Funeral Home of the remaining deficiencies in the renewals.

60. On or about February 25, 2014, the Board issued renewals of Shipman Funeral Home's seller and provider licenses.

61. Shipman Funeral Home held out to the public and operated as both a seller and a provider during the time when Shipman Funeral Home's licenses were lapsed and the seller license was suspended.

Applicable Legal Authority

62. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created by this chapter;

* * *

(6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

* * *

(11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

63. Section 333.061, RSMo, requires a license to operate as a funeral establishment in Missouri and states, in relevant part:

1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director[.]

64. Each licensed seller is to designate a manager in charge pursuant to 20 CSR 2120-3.200 that states, in relevant part:

(1) Except as otherwise provided in sections 436.400 to 436.520, RSMo, and any rules validly promulgated pursuant to those sections—

* * *

(C) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within thirty (30) days of the change.

65. Regulation 20 CSR 2120-1.040(14) defines funeral director—in-charge as follows:

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

66. Regulation 20 CSR 2120-2.070(7) clarifies the requirement for each funeral establishment to register its funeral director-in-charge with the Board and states:

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

67. Section 333.315, RSMo, requires a provider license to fulfill preneed contracts and states, in relevant portion:

1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

* * *

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

- (1) File an application for renewal on a form established by the board by rule;
- (2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;
- (3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;
- (4) File an annual report with the state board which shall contain:

(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

68. Section 333.320.1, RSMo, requires a license to operate as a seller and that such seller be authorized and registered with the Missouri secretary of state to conduct business in Missouri and states:

1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

69. Section 333.330, RSMo, authorizes the Board to impose discipline upon funeral director licensees and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall

advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

* * *

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436[.]

70. Section 436.405, RSMo, defines terms used in Chapters 333 and 436 and states, in relevant part:

(5) “Joint account-funded preneed contract”, a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;

71. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

72. Section 436.415.2, RSMo, sets forth seller’s duties:

The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is [sic] statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

73. Section 436.455, RSMo, states:

1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the seller shall take whatever steps are required by the financial institution to secure payment of the funds from the financial institution. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

74. Section 436.465, RSMo, requires a seller to maintain adequate books and records and states:

A seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

75. Section 436.470, RSMo, authorizes financial examinations and requires the cooperation of the licensee and states, in relevant portion:

* * *

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

3. Upon determining that an inspection, investigation, examination, or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination, or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.

4. The board shall not appoint or authorize any person to conduct an inspection, investigation, examination, or audit under this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination, or audit under chapter 333 or sections 436.400 to 436.520.

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial

examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

* * *

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

* * *

76. The statutes regulating preneed contracts changed, effective August 28, 2009, but due to the savings clause found in Section 436.412, RSMo, portions of the law from the Revised Statutes of Missouri (2000) (the "Old Law") are relevant to this Agreement. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

77. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

78. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

- (1) It is in writing;
- (2) It is executed by a seller who is in compliance with the provisions of section 436.021;
- (3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
- (4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
- (5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
- (6) It contains the name and address of the seller and the provider[.]

79. Section 436.021.2(1), RSMo (2000) of the Old Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

- (1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]

80. Section 436.053.1, RSMo (2000) of the Old Law stated, in relevant part:

Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that all funds paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary's death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary's death[.]

Cause for Discipline

81. Sondra Shipman's registered fictitious name of "Shipman Funeral Home" expired on or about May 29, 2012.

82. Sondra Shipman registered the fictitious name of "Shipman Funeral Home" again on or about February 1, 2013.

83. Between on or about May 29, 2012 through on or about January 31, 2013, Shipman Funeral Home conducted business in Missouri when it was not authorized and/or registered with the Missouri secretary of state to conduct business in Missouri in violation of Section 333.320.1, RSMo.

84. As funeral director in charge of the funeral establishment and as manager in charge of the seller, Derek Shipman was responsible to ensure that Shipman Funeral Home operated in compliance with the law.

85. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a funeral establishment and/or seller when it was not eligible to do so.

86. The letter dated February 15, 2012 received from Shipman Funeral Home in response to the Financial Examination Report failed to correct or sufficiently address the following deficiencies:

- a. Shipman Funeral Home reported that for consumer B.Y., a life insurance policy existed to cover the amount not paid on the contract, but the financial exam found that Shipman Funeral Home failed to deposit \$642.12 into the joint account that it received from the consumer and licensee failed to address the shortage issue in the joint account in their response;
- b. For consumer E.W., Shipman Funeral Home reported that E.W. had died and that an insurance policy covered the balance of the policy, but did not address the financial exam finding that E.W. paid \$1,607.59 that Shipman Funeral Home did not deposit into the joint account and licensee did not address the shortage of funds in the joint account in their response;
- c. For consumer J.N., Shipman Funeral Home responded that the consumer was still making payments, but the financial exam found that the contract had been paid in full and that Shipman Funeral Home failed to deposit \$383.83 into the account and licensee failed to address the shortage of funds in the joint account in their response;
- d. For consumer L.M., Shipman Funeral Home responded that the balance in the Certificate of Deposit was \$1,000, but the financial exam found that the original documents revealed a balance in a Certificate of Deposit of \$2,375.82 and that Shipman Funeral Home lacked records showing how much the consumer had paid; and

- e. For consumer S.K., Shipman Funeral Home responded that the balance in the Certificate of Deposit is \$5,937.44, but the financial exam found that the original documents showed a Certificate of Deposit of \$6,008.11 and that Shipman Funeral Home lacked records showing how much the consumer had paid.

87. The financial examination found the following statutory violations that have not been corrected by Shipman Funeral Home:

- a. Violation of Section 436.053, RSMo (2000) (Old Law) and Section 436.455, RSMo, in that the joint accounts hold less than the required amounts for consumers B.Y, E.W., J.N, L.M, and S.K.;
- b. Violation of Section 436.021.2(1), RSMo (2000) (Old Law) and Section 436.465, RSMo, in that Shipman Funeral Home failed to maintain adequate records of how much consumers paid on preneed contracts, and the Board's examiner could not confirm funds were handled properly; and
- c. Violation of Section 436.470, RSMo, by not cooperating with the Board in its examination process by failing to appear before the Board when requested to discuss the findings of the financial examination.

88. Derek Shipman failed to ensure that Shipman Funeral Home maintained records and cooperated fully with the Board in its exercise of its statutory duty to conduct a financial exam of Shipman Funeral Home's preneed transactions as required by statute.

89. Derek Shipman violated the above cited provisions of Chapter 436, RSMo.

90. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate the above cited provisions of Chapter 436, RSMo.

91. Derek Shipman allowed Shipman Funeral Home to continue to hold out to the public as both a seller and a provider during the time when Shipman Funeral Home's licenses were lapsed and the seller license was suspended.

92. Derek Shipman assisted and/or enabled Shipman Funeral Home to practice and/or offer to practice as a seller and/or provider when it was not licensed or registered and eligible to do so.

93. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.315, RSMo.

94. Derek Shipman assisted and/or enabled Shipman Funeral Home to violate Section 333.320, RSMo.

95. Derek Shipman's conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of his functions and duties as a funeral director.

96. Derek Shipman's conduct, as set forth above, constitutes a violation of a professional trust and/or confidence.

97. There is cause for discipline against Derek Shipman's funeral director license pursuant to Sections 333.330.2 (5), (6), (7), (11), (14), and (19), RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045, RSMo:

1. Licensee's license to practice as a funeral director is hereby placed on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period"), beginning on the

effective date of this Settlement Agreement. During the period of probation, Derek Shipman shall be entitled to act as a funeral director, subject to the following terms and conditions:

Terms and Conditions of the Disciplinary Period

2. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

- a. Licensee shall submit written compliance reports to the Board no later than January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement since the previous report was filed and shall fully explain any non-compliance. In addition, Derek Shipman shall ensure that any written reports of compliance for Shipman Funeral Home are timely and accurately filed. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;
- b. Within the first six months of the Disciplinary Period, Derek Shipman shall have resolved with the Board all exceptions noted in the Financial Examination Reports of Shipman Funeral Home;
- c. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee

utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;

- d. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- e. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- f. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- g. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- h. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with the revenue laws of the state;
- i. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period; and

- j. Licensee shall not serve as funeral director in charge or as manager in charge at any facility other than Shipman Funeral Home during the Disciplinary Period without the written consent of the Board.

3. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

4. Upon the expiration of the Disciplinary Period and successful completion of the Disciplinary Period, Licensee's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's license.

5. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

6. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation(s).

7. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

8. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

9. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

10. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties

constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

11. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

12. This Settlement Agreement constitutes discipline against Licensee's license.

13. This Settlement Agreement shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee


Derek Shipman

Dated: 8/13/15

Board



Sandy Sebastian

Executive Director

State Board of Embalmers and Funeral Directors

Dated: 9.10.15

Approved:

BANDRE HUNT SNIDER, LLC

By: 

David G. Bandre

#44812

227 Madison Street

Jefferson City, MO 65101

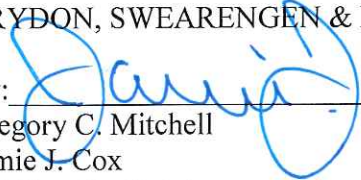

Telephone: (573) 635-2424

Facsimile: (573) 635-2010

EFFECTIVE DATE
9.25.15
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

E-mail:dave@bhslawmo.com
ATTORNEY FOR LICENSEE

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